

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

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|------------------------------|---|---|
| PHILLIP STRZALKOWSKI, |) | |
| |) | CASE NO. |
| Plaintiff, |) | |
| |) | JUDGE |
| v. |) | |
| |) | <u>COMPLAINT</u> |
| MARY ANN TOWNSHIP |) | |
| |) | <u>JURY DEMAND INCLUDED HEREON</u> |
| Defendant. |) | |

Plaintiff Phillip Strzalkowski for his Complaint against Defendant Mary Ann Township alleges as follows:

JURISDICTION AND VENUE

1. This case challenges Defendant's policies and practices that violated the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201-219.
2. This Court has jurisdiction over Plaintiff's FLSA claims pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216(b).
3. Venue is proper in this District and Division pursuant to 28 U.S.C. §1391(b). A substantial part of the events or omissions giving rise to Plaintiff's claims occurred here.

PARTIES

4. Plaintiff is a resident of Ohio who was employed as a firefighter by Defendant within the last three years.
5. Defendant is an Ohio township that "may sue and be sued...." O.R.C. 503.01.
6. At all relevant times, Plaintiff was an employee within the meaning of the FLSA, 29 U.S.C. § 203(d).
7. At all relevant times, Defendant was an "employer" within the meaning of the

FLSA, 29 U.S.C. § 203(d).

FACTUAL ALLEGATIONS

8. Defendant is an Ohio township that operates its own fire department.

9. Plaintiff worked for Defendant as a firefighter. He frequently worked over 40 hours in a workweek. He was not paid any overtime premium equal to 1.5 times his regular rate of pay until he worked more than 106 hours in a 14-day work period.

10. Defendant's practice of paying firefighters overtime after 106 hours in a 14-day work period could possibly be lawful if it was a municipality, county, fire district, or State. 29 U.S.C. 203(y); 29 U.S.C. 207(k).

11. Defendant is not a municipality, county, fire district, or State.

12. Thus, Defendant's failure to pay Plaintiff any overtime premium until Plaintiff worked over 106 hours in a 14-day period violated the FLSA.

13. Defendant knowingly and willfully failed to pay Plaintiff for all the overtime compensation that he was owed. Defendant knew or should have known that it was not a municipality, county, fire district, of State, and therefore not allowed to take advantage of the partial exemption from overtime contained in 29 U.S.C. 207(k).

COUNT ONE
(FLSA Overtime Violation)

14. Plaintiff incorporates by reference the foregoing allegations as if fully rewritten herein.

15. Plaintiff brings this claim for a violation of the FLSA's overtime provisions.

16. The FLSA required Defendant to pay him an overtime premium when he worked over 40 hours in a workweek.

17. Defendant failed to pay all the required overtime compensation owed to Plaintiff.

18. Defendant knowingly and willfully failed to pay Plaintiff for all the overtime compensation that he was owed. Defendant knew or should have known that it was not a municipality, county, fire district, of State, and therefore not allowed to take advantage of the partial exemption from overtime contained in 29 U.S.C. 207(k).

19. As a result of Defendant's violations of the FLSA, Plaintiff was injured in that he did not receive all the overtime compensation due to him pursuant to the FLSA. He is entitled to an award of "unpaid overtime compensation" as well as "an additional equal amount as liquidated damages." 29 U.S.C. § 216(b). "The court ... shall, in addition to any judgment awarded to the Plaintiff or Plaintiff, allow a reasonable attorney's fee to be paid by the Defendant, and costs of the action." *Id.*

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Honorable Court:

- A. Enter judgment against Defendant and in his favor;
- B. Award him compensatory damages in the amount of his unpaid wages as well as liquidated damages in an equal amount; and,
- C. Award Plaintiff his attorney's fees incurred in prosecuting this action.

Respectfully submitted,

NILGES DRAHER LLC

/s/ Hans A. Nilges

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Counsel for Plaintiff

JURY DEMAND

Plaintiff hereby demands a trial by jury on all claims so triable.

/s/ Hans A. Nilges

Hans A. Nilges

Counsel for Plaintiff